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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1222

HENRY D. BAKER,

Petitioner,

vs.

WILLIAM H. DELAY, State Police Detective.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT FOR THE COUNTY OF SUFFOLK, COMMONWEALTH OF MASSACHUSETTS.

William H. Lewis,
Counsel for Petitioner.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States of America:

The petition of Henry D. Baker of Boston, Massachusetts, respectfully shows to this Honorable Court:

Summary and Short Statement of Matters Involved.

This is a petition for a writ of certiorari to the Superior Court of the Commonwealth of Massachusetts sitting within and for the County of Suffolk to review a decree of that court entered February 6, 1942, in accordance with the

opinion and rescript of the Supreme Judicial Court of the Commonwealth of Massachusetts, being the highest court of record in said State, affirming the judgment of the Superior Court and ordering "that the petitioner be remanded to custody under the warrant of the Governor for rendition to the agent of the Governor for the State of New Hampshire."

The execution of this judgment has been stayed pending petition of certiorari in this Court.

The Record shows that the petitioner was arrested as a fugitive from justice April 11, 1941. April 16, 1941, the Governor of the State of New Hampshire made a demand upon the Governor of Massachusetts for the rendition of one Henry D. Baker alias Henry MacKinnon to the State of New Hampshire to answer to the crime of robbery. The petitioner requested a hearing by the Governor; the matter was referred by the Governor to the Attorney General, in whose office a hearing was held April 25, 1941. On the 25th day of April, 1941, the Governor of Massachusetts issued a warrant directing that Henry D. Baker be delivered to the custody of an agent of the State of New Hampshire for removal to that State to answer the charge against him. Whereupon, the petitioner was taken into custody by the respondent, William H. Delay, State Police Detective; that upon the 28th day of April, 1941, the petitioner filed a petition for the writ of habeas corpus in the Superior Court for Suffolk County, being docket No. 369,498 for civil business; that upon May 23, 1941, the Superior Court dismissed his petition and May 24, 1941, petitioner claimed exceptions to the rulings and finding of the Superior Court and filed his exceptions in the Supreme Judicial Court for the Commonwealth of Massachusetts for the January Term of Court which exceptions are No. 9556 of the docket of that court; that on the 29th day of January, 1942, the Supreme Judicial Court affirmed the finding of the Superior Court and re-

manded the petitioner to the custody of the agent for the State of New Hampshire under the order of the Governor of Massachusetts.

Jurisdiction.

This is a case involving application and construction of Article IV, Section 2, of the Constitution of the United States, also of R. S. 5278, U. S. Code Annotated Title 18, Paragraph 662, being the Act of Congress to aid the enforcement of the Constitutional provision for the interstate extradition of fugitives from justice. This Court has jurisdiction by reason of Section 2 of Article III of the Constitution of the United States. The jurisdiction of this Court is invoked under the above Constitutional authorities, and more particularly, under Section 237 of the Judicial Code (as amended by the Act of February 13, 1925, paragraphs 13, 14 Stat., U. S. Code Title 28, Section 344 (b).

Questions Presented for Review.

The general question presented for review is can the finding of the Governor of Massachusetts, acting through the Attorney General, on the decree of the Superior Court for the Commonwealth of Massachusetts in accordance with the opinion and rescript of the Supreme Judicial Court for the Commonwealth, reported in Advance Sheets for 1942, numbered 221, pages 19 to 25 of this Record, be sustained?

Second, is the rendition of the petitioner to the State of New Hampshire to be determined by the Constitution and laws of the United States, to wit, Section 2 of Article III of the Constitution and R. S. 5278 or is the rendition to be determined by the State Laws of Massachusetts, General Laws (Ter. Ed. Chapter 276, Section 14, as amended by Acts of 1937, Chapter 304)?

Third, more particularly must it be shown that the petitioner was in the State of New Hampshire when the crime was committed?

Fourth, must it be shown that the petitioner was the identical person indicated in the State of New Hampshire?

Fifth, must it be shown by competent evidence that he was the person named in the Governor of New Hampshire's warrant?

Sixth, must officials be governed by legal and competent evidence in making their findings or may a citizen of one state be handed over to another state at the discretion of the Governor of the asylum state or one of his assistants?

Reasons Relied On for Allowance of Writ.

In addition to the reasons set forth in the questions presented for review it is suggested first, that more is at stake than the liberty of the present petitioner. The Legislatures of thirty-seven states in all, have passed a uniform "Criminal Interstate Extradition Law" which is revolutionary, if not unconstitutional. See "Uniform Laws Annotated" 1826-1934-1937. Acts and Resolves of Massachusetts 1937, Chapter 304. The Act of '37, under which these proceedings were had, struck out Sections 11 to 20 inclusive of the General Laws Annotated, Chapter 276, and inserted therein certain provisions inconsistent with, if not contrary to, the provisions of Article III, Section 2 and of R. S. 5278.

Second, the opinion of the Supreme Judicial Court has circumvented the provisions of the Constitution and laws of the United States.

Third, the rules of evidence and the burden of proof have been ignored or over-ridden.

Fourth, the Uniform Law with regard to extradition should be Federal rather than State; that is a citizen's right.

Conclusion.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the Superior Court of Suffolk County, Commonwealth of Massachusetts, to the end that judgment entered in said case may be reviewed and reversed by this Honorable Court and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

HENRY D. BAKER,
Petitioner,

By his attorney, WILLIAM H. LEWIS.